

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**UNITED STATES OF AMERICA**

**Plaintiff,**

**-vs-**

**Case No. 3:07-cr-193(2)**

**BRANDON L. SMITH**

**Defendant**

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**ENTRY AND ORDER DENYING DEFENDANT'S MOTION  
FOR RECONSIDERATION (DOC. #40)**

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This matter comes before the Court pursuant to this Court's Commitment Order (Doc. #38) filed June 4, 2008 and the Defendant's subsequent Motion for Reconsideration (Doc. #40) filed June 25, 2008. The Government responded to said Motion by Objections to the Motion (Doc. #41) filed July 2, 2008.

The Court in its Commitment Order (Doc. #38) committed Defendant to the sole custody of the Attorney General to be hospitalized for treatment in a suitable facility for such reasonable time not to exceed four (4) months as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial in this matter to proceed.

Defendant objects to this commitment and requests the Court to reconsider its commitment. The basis for this request is that both doctors evaluating the Defendant for the Court concluded that he was mentally retarded. One doctor stated there is no treatment for mental retardation while the other opined that it is not likely he can be restored.

While this Court recognizes that the prognosis for restoration is not good, 18 U.S.C. §4241(d) reads “shall commit the defendant to the custody of the Attorney General.” The Court has no discretion.

Defendant’s Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

August 22, 2008

**\*S/THOMAS M. ROSE**

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE